

DERRICK YOUNG;
Plaintiff,
v.
CHAD WADDELL, Sergeant at
Wilkes Correctional
Center;
BOBBY HARLESS, Superinten-
dent at Wilkes Correc-
tional Center;
(FNU) CREWS, Correctional
Officer at Wilkes Cor-
rectional Center;
KENNETH JONES, Inmate
Grievance Examiner;
JONNITA WILLIAMS, Inmate
Grievance Examiner; and
INA HINTON, Administrative
Assistant for the State
of North Carolina's
Grievance Board,
Defendants.

Inasmuch as Plaintiff is seeking to proceed with this action in forma pauperis, the Court is authorized to conduct an initial review of his Complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A. Having conducted that review, the Court has determined

that Plaintiff's Complaint must be dismissed, without prejudice, for his failure to exhaust his administrative remedies for his claims.

II. FACTUAL BACKGROUND

Plaintiff is an inmate at the Wilkes Correctional Center. (Doc. No. 1 at 2). A careful review of his form-Complaint and its attachments -- which include copies of a grievance that Plaintiff submitted to his Prison and various letters of response -- revealed the following facts. On October 28, 2009, Defendants Crews and Harless opened Plaintiff's legal mail outside of his presence. (Id. at 4). On that same date, Plaintiff filed a grievance (assigned number 4665-59-09, hereafter, "grievance number 2") complaining that his mail was opened out of his presence and copied without his permission. (Id. at 9 and 10). Grievance number 2 also requested an immediate transfer. (Id.). However, grievance number 2 was returned to Plaintiff by Defendant Waddell along with an explanation that said grievance could "only be accepted when [his] current grievance [number 4665-22-09, hereafter, "grievance number 1"] completed step two." (Id. at 9). Grievance number 2 was received by Defendant Waddell on October 30, 2009. (Id.).

Plaintiff's materials further reflect that on November 12, 2009, he submitted an "Information Request Form," inquiring about

the status of grievance number 2; however, he reportedly did not receive any response to that inquiry. (Id. at 13). At some subsequent point in November 2009, Plaintiff submitted a grievance (hereafter, the "appeal grievance") directly to Defendant Jones at the Inmate Grievance Resolution Board (hereafter, "the Board") due to the reported lack of a response to grievance number 2. (Id. at 15 and 17). However, on January 21, 2010, Defendant Jones returned the appeal grievance to Plaintiff with an explanation that his case could not be reviewed on appeal because he had not taken it through the first two steps of the grievance process at his Prison. (Id. at 15).

Plaintiff's materials also reflect that on April 12, 2010, Defendant Williams wrote him and explained that the Board had received his otherwise unspecified correspondence in which he expressed his disagreement with an unidentified Grievance Examiner's decision about his appeal. (Id. at 19). The letter further advised Plaintiff that the decision about the appeal was final and not subject to further administrative review. (Id.). On April 25, 2010, Plaintiff executed a "Statement By Witness" form in which he detailed the foregoing matters. (Id. at 16-18). Such Statement also reflects Plaintiff's report that by the time he sent his appeal to Defendant Jones, he had completed "all steps . . ." for grievance number 1. (Id. at 17).

Last, Plaintiff's materials reflect that on July 7, 2010, Defendant Hinton responded to his correspondence concerning grievance number 2, and explained that a response to that grievance already had been sent to Plaintiff. Consequently, Plaintiff filed the instant Complaint complaining about the occasion when his legal mail was opened by Defendants Crews and Harless, and about the manner in which Defendants handled grievance number 2. (Id. at 4).

Notably, Question II on Plaintiff's Complaint form inquires about his completion of the inmate grievance process. (Id. at 1). In response to that inquiry, Plaintiff candidly admits that he did not complete the three-step inmate grievance process, reporting that he only completed "Step I" of it. (Id.).

III. DISCUSSION

The Prison Litigation Reform Act of 1995 mandates that "no action shall be brought with respect to prison conditions under § 1983 of this title, or any other Federal law, by a prisoner . . . until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). In Porter v. Nussle, 534 U.S. 516 (2002), the Supreme Court held that the PLRA's exhaustion requirement applies to all inmate suits about prison life. In Woodford v. Ngo, 548 U.S. 81, 85 (2006), the Supreme Court stated that "[p]risoners must exhaust all 'available' remedies, not just

those that meet federal standards.” Indeed, Woodford concluded that there must be “proper exhaustion of administrative remedies, which ‘means using all steps that the agency holds out, and doing so properly (so that the agency addresses the issues on the merits.)’” (internal quotation marks and citation omitted). Id. at 90. Thus, exhaustion is mandatory, and unexhausted claims cannot be brought in federal court. Booth v. Churner, 532 U.S. 731, 741 (2001); Jones v. Bock, 549 U.S. 199, 211 (2007).

A prisoner’s failure to exhaust his administrative remedies is an affirmative defense; therefore, the prisoner does not have to specially plead or demonstrate exhaustion in his complaint. Bock, supra, at 211-12 (2007). Nevertheless, a court may dismiss a prisoner § 1983 action on initial review when it is apparent from the face of the complaint that the prisoner has not exhausted administrative remedies. See Anderson v. XYZ Correctional Health Services, 407 F.3d 674, 678-83 (4th Cir. 2005) (noting that 42 U.S.C. § 1997(e)(c)(2) “clearly contemplates the dismissal on the merits of some claims that have not been exhausted”; and that while failure to exhaust is an affirmative defense, that fact does not “foreclose in all cases the possibility of a sua sponte dismissal on exhaustion grounds.”).

As has been noted, Plaintiff admits that he only completed Step I of the grievance procedure. (Doc. No. 1 at 1). However,

Plaintiff's Complaint and its attachments reflect that he actually did not complete even Step I of that process for his current allegations inasmuch as grievance number 2 was returned to him, unprocessed, and he has never re-filed it after grievance number 1 completed Step II. Nor did Plaintiff's attempt to submit that grievance directly to the Board constitute a completion of the process. Consequently, the foregoing information makes it clear that Plaintiff's allegations have not yet been exhausted. Ultimately, the Court cannot exercise jurisdiction over Plaintiff's claims; therefore, his Complaint must be dismissed without prejudice. 42 U.S.C. § 1997e(a).

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That pursuant to 42 U.S.C. § 1997(e), the instant Complaint is **DISMISSED** without prejudice for Plaintiff's failure to exhaust his administrative remedies for the allegations raised therein; and

2. That the Clerk shall send copies of this Order to Plaintiff.

SO ORDERED.

Signed: August 9, 2010

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

